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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 717

ALFRED H. OSBORNE, ROBERT B. SYMPSON AND PHIL CABBELL,

Petitioners,

vs.

J. A. PURDOME, SHERIFF OF JACKSON COUNTY, MISSOURI

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSOURI AND BRIEF IN SUPPORT THEREOF.

JOHN T. BARKER,
AMOS T. HALL,
Counsel for Petitioners.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 717

ALFRED H. OSBORNE,

Petitioner,

vs.

J. A. PURDOME, Sheriff of Jackson County, Missouri,

Respondent

ROBERT B. SYMPSON,

Petitioner,

vs.

J. A. PURDOME, Sheriff of Jackson County, Missouri,

Respondent

PHIL CABBELL,

Petitioner,

vs.

J. A. PURDOME, Sheriff of Jackson County, Missouri,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSOURI EN BANC

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioners Alfred H. Osborne, Robert B. Sympson, and Phil Cabbell, respectfully petition for a writ of certiorari to review the decision and final judgment of the

Supreme Court of Missouri, *en banc*, quashing certain original writs of *habeas corpus* theretofore issued by the Supreme Court of Missouri, wherein petitioners had sought to be released from the illegal imprisonment by respondent under the pretext of a commitment for criminal constructive contempt of court issued by the Honorable Thomas R. Hunt, Judge, of Division No. 4 of the Circuit Court of Jackson County, Missouri. The judgment of the Supreme Court of Missouri was rendered on the 10th day of December, 1951, which said judgment became final on the 14th day of January, 1952, by the overruling by that court of petitioners' motion for rehearing (R. 292).

Opinion of the Missouri Supreme Court

The Opinion of the Supreme Court of Missouri, *en banc*, is reported in Alfred H. Osborne, Petitioner, *vs.* J. A. Purdome, Sheriff, Respondent; Robert B. Sympson, Petitioner, *vs.* J. A. Purdome, Sheriff, Respondent; Phil Cabbell, Petitioner *vs.* J. A. Purdome, Sheriff, Respondent, 244 S. W. 2d 1005 (not yet officially reported).

The Opinion of the Supreme Court of Missouri appears at page 267 of this record and is made a part hereof. Petitioners' motion for rehearing appears at page 285 of the record hereof, which motion, by reference, is made a part hereof.

Statement as to Jurisdiction

The jurisdiction of this Court is invoked under subsection 3 of Sec. 1257 of Title 28, Act of June 25, 1948, C. 646, 62 Stat. 929.

Petitioners seek to have reviewed a judgment of the Supreme Court of Missouri rendered in three original *habeas corpus* actions (consolidated by that court (R. 264), reported in 244 S. W. 2d 1005 (not yet officially reported),

wherein the Supreme Court quashed its writs of *habeas corpus* theretofore issued by it. The Supreme Court of Missouri is the highest court of Missouri in which a decision could be had (Constitution of Missouri, 1945, Art. 5, Sec. 2).

The judgment of the Supreme Court of Missouri rendered on the 10th day of December, 1951, denies petitioners' right guaranteed to them by Section 1 of the Fourteenth Amendment to the Constitution of the United States, which petitioners specifically pleaded and raised at the first opportunity in their petition for *habeas corpus* in that court (R. 267-281); the Supreme Court of Missouri, in its Opinion, stated that petitioners invoked the due process clause of the Fourteenth Amendment to the Constitution of the United States but decided it against them (R. 272). Again, in a motion for rehearing, that they were denied due process of law and the equal protection of the law and invoked the Fourteenth Amendment to the Constitution of the United States.

On January 14, 1952, the Supreme Court of Missouri, without further opinion, overruled petitioners' application for rehearing, on which date the judgment became final, and petitioners had exhausted their remedies in that court.

Cases believed to sustain jurisdiction of this Court are:

Tumey v. *Ohio*, 273 U. S. 510;
47 S. Ct. 437, 445;
Cooke v. *The United States*, 267 U. S. 517;
Inland Steel Co. v. *Natl. Labor Rel. Bd.*, 109 Fed. 2d 9.

Preliminary Statement

This case is of great importance to the Bench, the Bar, and the public. It raises the question of trial by contempt. This Court should carefully reexamine all of its former contempt opinions as much confusion exists today.

Petitioners Osborne and Sympson were attorneys of record in the damage suit of *Burton* v. *Moulder*, before Honorable Thomas R. Hunt, one of the ten judges of the Circuit Court of Jackson County, Missouri, on September 27-29, 1950 (R. 1). Petitioner Cabbell is a colored layman, and all three were charged with knowingly, locating, arranging for, coaching, and presenting false testimony in said trial (R. 1-2). Several months after the case had been tried, and while it was on appeal, the said Honorable Thomas R. Hunt, Judge, made a secret one-man grand jury investigation in his own chambers and outside of the presence of petitioners, and without their knowledge, and interviewed witnesses and took statements from them. This is admitted by respondents in their suggestions in opposition to the extension of time filed in this Court on the eighth day of April, 1952, wherein respondent said:

> "The record shows that contemnor Everage did call on Judge Hunt in chambers accompanied by his own lawyer, to give the court information about the case of Burton v. Moulder."

(See also affidavits of Senator William Orr Sawyer and Judge Marion D. Waltner in appendix.) After such secret investigation by said judge, and after he had satisfied himself regarding petitioners, he appointed three Kansas City lawyers as friends of the court to confer with the prosecuting officials regarding the filing of charges. Charges of contempt were then filed in said Circuit Court against the three petitioners and assigned to the same judge for trial, the Honorable Thomas R. Hunt, who had presided at the trial of the damage suit of *Burton* v. *Moulder*, and who had conducted the investigation, as aforesaid. Petitioners believing that said judge was not in a position to disregard what he had previously found in his investigation, and could not therefore give them a fair trial, filed an application alleging

his prejudice, and asked that one of the other nine judges in said county be selected to try said charges. The Constitution of Missouri also provides for the transfer of judges from one court in Missouri to another court, and Judge Hunt could have easily selected another judge to hear said charges; but the said Judge Hunt refused to disqualify himself and refused to call in another judge, although he could have easily done so, but presided to hear the charges of constructive contempt committed out of his presence, perjury or subornation of perjury, and at the conclusion of said trial found all three of the defendants guilty and sentenced them to eight months in the county jail, and also fined petitioners Osborne and Sympson $1,000.

The main witness against petitioners at the trial was Everage, who admitted on cross examination that he had talked to the judge in his chambers before the contempt trial (R. 155-6). The charges were that the petitioners had given money to witness Everage to testify that he saw the collision in the damage suit when, as a matter of fact he had not seen it at all (R. 2). They were charged with perjury or the subornation of perjury in causing witnesses to testify falsely. Petitioners applied for a writ of habeas corpus to the Supreme Court of the State of Missouri which, after hearing and argument, were denied, and certiorari is sought in this court to review said judgments, sending petitioners to jail for offenses committed outside of the presence of the judge, and which, in no wise, interfered with the orderly progress of the trial. Since then petitioner Osborne has been adjudged guilty of two other constructive contempts and sentenced to ten months in jail and also 360 days in jail and fined; that all charges of contempt against him are substantially identical.

The Supreme Court of Missouri held: that the charge against petitioners was criminal contempt—that such proceedings were *sui generis;* that all Courts have the inherent

power to punish for criminal contempt; and no jury trial; that the allegation that Judge Hunt was prejudiced was a mere conclusion; that the statute providing change of venue does not apply to contempt cases; that the complaint was sufficient that petitioners were not charged with perjury but with paying witnesses to give false testimony; (if not perjury or subordination of perjury, what is it); that no other Missouri case can be found involving such a charge; a case of first impression in Missouri; (R. 279).

Questions to Be Decided on Certiorari

This court should lay down definite and specific rules regarding trials by contempt, showing what trials may be conducted by a judge; whether or not the judge who has been offended shall hear the charges; or whether an independent judge shall hear them. These questions are of great importance, and some of the many important questions to be decided in this case are:

(a) Whether or not a trial judge, after verdict, may conduct a secret grand jury hearing to determine the guilt of a lawyer, and then cause charges to be filed against him, and then to hear said charges without a jury, after an application of prejudice has been filed against him, when there were nine other judges available in the county.

(b) Whether a judge before whom constructive contempt has been committed is compelled to hear charges of contempt or can another judge be called in to hear same.

(c) Whether or not jerjury or subornation of perjury is contempt. It is a statutory crime, but is it contempt.

(d) Whether or not trial by contempt is to be substituted in the United States for trial by jury.

(e) Whether or not a lawyer who is alleged to have paid a witness money outside of the courthouse to testify falsely, and where the trial was not delayed or interfered with in any way, shall be tried by contempt

or the matter certified to a grand jury for criminal prosecution.

(f) Whether or not a judge confronted with affidavits of bias and prejudice shall try the case or whether another judge, readily available, should be called in to try it.

Reasons for Granting the Writ

These questions are of the utmost importance to the Bench and Bar of the United States. These lawyers were charged with paying witnesses money to testify falsely, which is either a charge of perjury or subornation of perjury (R. 2). Petitioners were entitled to be tried by a jury on these criminal charges. The judge who did try the case and who did sentence them to jail had tried the damage suit in which the perjury arose. After he investigated the matter, long after the trial was over, he must have been convinced from the testimony of witnesses in his chambers that petitioners were guilty of perjury or subornation of perjury. It could not be otherwise. Being thus convinced, he should have disqualified himself without having the affidavit of prejudice filed. In Missouri the statutes allow affidavits of prejudice to be filed against a judge, and thereupon he shall call in another judge. The Missouri Supreme Court Opinion after holding that the complaints were sufficient against petitioners' attack, and after holding that "purgation by oath" was not the law in the case and never was the law in Missouri, held that no change of venue was permissible in a criminal contempt case, and that the judge before whom the contempt was committed was the proper person to try same, and his was the theory of the trial court; that contempt proceedings are *sui generis* (R. 44-45). There was little if any evidence against petitioner Cabbell except that of association, which was not sufficient to justify his conviction. *State* v. *Bresse*, 326 Mo. 885; *State* v. *Odbur*, 317 Mo. 372;

State v. *Mathis,* 129 S. W. (2) 20. There is no direct appeal in Missouri from a conviction of contempt. The only way to have such a case reviewed by a higher court is by habeas corpus. Other reasons for granting the writ will be assigned in the brief which will accompany this petition.

Prayer

In view of the unsettled law in the United States as to trial by contempt, and in view of the conflict in many courts, petitioners Osborne, Sympson, and Cabbell respectfully pray that a writ of certiorari issue out of this court directed to the Supreme Court of Missouri to the end that said Opinion and Judgment of the Supreme Court of Missouri *en banc* in the said three trials by contempt cases, consolidated as aforesaid, be reviewed by this court, as provided by law, and that upon such review, said judgments of trial by contempt be reversed, and that petitioners, and each of them, have such relief as to this court may seem appropriate.

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BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I

The Fourteenth Amendment to the Constitution of the United States Guaranteed Petitioners a Fair Trial Before a Disinterested and Unprejudiced Judge. This They Did Not Get.

Cooke v. *The United States,* 267 U. S. 517, 539;
Inland Steel Co. v. *National Labor Relations Board,* 109 Fed. 2d 9, 20, 21;
In Re Oliver, 333 U. S. 257;
Tumey v. *Ohio,* 273 U. S. 510.

Cooke v. *The United States,* 267 U. S. 517, 539:

> "All we can say upon the whole matter is that where conditions do not make it impracticable, or where the delay may not injure public or private right, a judge called upon to act in a case of contempt by personal attack upon him, may, without flinching from his duty, properly ask that one of his fellow judges take his place. *Cornish* v. *The United States,* 299 Fed. 283, 285: *Toledo Company* v. *The United States,* 237 Fed. 986, 988."

Inland Steel Co. v. *National Labor Relations Board,* 109 Fed. 2d 9, 20, 21:

> "That a trial by a biased judge is not in conformity with due process is sustained by the authorities. In *Tumey* v. *Ohio,* 273 U. S. 510, 535; 47 S. Ct. 437, 445; 71 L. Ed. 749; 50 A. L. R. 1243, the court said:
>
> * * * 'No matter what the evidence was against him, he had the right to have an impartial judge. * * *'

The court, in *Jordan* v. *Massachusetts*, 225 U. S. 167, 176; 32 S. Ct. 651, 652; 56 L. Ed. 1038 said: 'Due process implies a tribunal both impartial and mentally competent to afford a hearing. * * * ,,

II

The Affidavits of Prejudice Against Honorable Thomas R. Hunt Did Not State Conclusions But Facts. He Should Have Disqualified Himself and Called in Another of the Many Judges Available.

Cooke v. *The United States*, 267 U. S. 517, 539;

Toledo Newspaper Co. v. *The United States*, 237 Fed. 986, 988;

Schmidt v. *The United States*, 115 Fed. 2d, 394, 397, 398;

State v. *Irbine*, 335, Mo. 261;

State v. *Mitts* (Mo.) 29 S. W. 2d, 125;

Sec. 545.660 *R. S. Mo.* 1949

Toledo Newspaper Co. v. *The United States*, 237 Fed. 986, 988:

"* * * but it is of the greatest importance that contempt proceedings be put, as far as possible, beyond the reach of even unjust adverse criticism, and in such a situation as has been recited, the judges of this court upon whom the duty may fall will always be ready to assign a judge from another district."

Schmidt v. *The United States*, 115 Fed. 2d, 394, 397, 398:

"The judge should not have been required to try the contempt cases while he was confronted with the affidavits of bias and prejudice, to which appellants had appended their certificates of good faith. This is no reflection upon the judge, nor upon any judge so confronted. Even a judge may not put aside the propensity of human nature as easily as he does his robe."

Cooke v. *The United States*, 267 U. S. 517:

> "We think, therefore, that when this case again reaches the District Court, to which it must be remanded, the judge who imposed the sentence herein should invite the senior Circuit Judge of the Circuit to assign another judge to sit in the second hearing of the charge against petitioner."

III

Petitioners Were Entitled to a Trial by Jury Not a Trial by Contempt

Ex Parte Shull, 221 Mo. 623;
Ex Parte Clark, 208 Mo. 121;
People v. *Doss*, 46 N. E. 2d, 984; cert. denied, 320 U. S. 762 (Ill.);
People ex rel Chicago Bar Assn. v. *Nobotny*, 54 N. E. 2d, 536; cert. denied 323 U. S. 734.

IV

The Complaint Is So Vague and Indefinite That It Will Not Support a Judgment of Conviction in Trial by Contempt

Thornhill v. *Alabama*, 310 U. S. 88, 96;
De Jong v. *Oregon*, 299 U. S. 353, 362;
Stromberg v. *California*, 283 U. S. 359, 369.

Stromberg v. *California*, 283 U. S. 369:

> A statute which upon its face, and as authoritatively construed, is so vague and indefinite as to permit the punishment of the fair use of this opportunity is repugnant to the guaranty of liberty contained in the Fourteenth Amendment.

V

Perjury or Subornation of Perjury Is Not Such an Obstruction to the Performance of Judicial Duty as to Constitute Contempt.

In Re Michael, 326 U. S. 227, 228:

> "All perjured relevant testimony is at war with justice, since it may produce a judgment not resting on truth. Therefore it cannot be denied that it tends to defeat the sole ultimate objective of a trial. It need not necessarily, however, obstruct or halt the judicial process. For the function of trial is to sift the truth from a mass of contradictory evidence, and to do so the fact-finding tribunal must hear both truthful and false witnesses. It is in this sense, doubtless, that this Court spoke when it decided that perjury alone does not constitute an "obstruction" which justifies exertion of the contempt power and that there "must be added to the essential elements of perjury under the general law the further element of obstruction to the Court in the performance of its duty." *Ex parte Hudgings, supra,* 382, 383, 384. And the Court added, "the presence of that element (obstruction) must clearly be shown in every case where the power to punish for contempt is exerted."

Argument

Other cases are discussed throughout the statement and brief. Judge Hunt must have convinced himself of the guilt of the petitioners after his investigation in chambers. When the complaint was filed before him, he should have disqualified himself and called in another judge. There were nine other judges in the county available, and under the Missouri Constitution, judges may transfer from one county to another. There are cases in the books where there is only one judge or one court, but that is not this situation. The charges against petitioners were purely crim-

inal and the judge should have submitted what information he had secured to the grand jury, where petitioners could have been indicted if there were grounds for indictment. Being a criminal case as it was under the Missouri rule, petitioners were clearly entitled to a jury trial. They were charged with a crime, not with interfering with the court. They did nothing to obstruct justice or interfere with the trial. It had been held and concluded many months before these charges were filed. Respondents told this court that one of the witnesses who testified against petitioners, Matt Jones, was shot and killed. Could this judge have cited petitioners for trial for the murder of Matt Jones, and could this judge have sentenced them to death without a jury? Trial by contempt should never be used except in the most rare incident. But when it is used the trial should be before a judge who has no feeling or interest in the matter; one who knows nothing about it. It is not right to require a judge who thinks he has been insulted to try a case against a person whom he thinks has insulted him. A judge, after all, is human. In case of doubt a jury should be called, or the case should be certified to the prosecuting officials for grand jury investigation. A grave injustice has been done petitioners in that they were denied "due process of law" under the Fourteenth Amendment to the Constitution of the United States, and they were likewise denied "the equal protection of the laws." They raised these federal questions at every opportunity and the court decided such questions against them. These men have not had their day in court; they were entitled to a trial, either before a fair and impartial judge or before a jury. They did not get either. Trial by contempt is a dangerous thing and should only be used when some offence is committed in the presence of the judge and which interfered with the orderly progress of the trial. Trial by

contempt should never be substituted for trial by jury. What petitioners are charged with doing is not contempt. They are charged with paying witnesses money away from the courtroom, and out of the presence of the judge, to testify falsely—to commit perjury. This is not contempt—it is perjury or subornation of perjury. It is not punishable by trial by contempt, but punishable under the criminal code. Respondent tells the court that it interfered with the trial. That is hardly possible. If a man can be punished summarily in contempt for bribing witnesses, or paying them to testify falsely, can he be tried by contempt for other criminal offenses such as murder? Suppose, instead of paying a witness to testify falsely, he kills the witness miles away from the courtroom to keep him from testifying. If he can be tried by contempt without a jury for bribing a witness, cannot he be tried in the same way for killing the witness? Petitoners did not commit contempt. If they are guilty, they are not guilty of contempt. They are guilty of a crime punishable by trial in criminal court, with the aid of a jury. Trial by contempt never contemplated anything except offenses interfering with the trial of a case and before the judge.

We have proven in this record beyond a question of a doubt:

That after the trial of the damage suit, Honorable Thomas R. Hunt, Judge, conducted a secret investigation in his chambers by interviewing witnesses and taking statements from them (1) by the testimony of witness Everage in this case (R. 155); (2) by the admissions of respondents in their suggestions in opposition to the extension of time to print the record, wherein they say that the judge interviewed a witness in his chambers; (3) by two affidavits in the appendix of Sawyer and Waltner. Having shown this, how can it be contended that petitioners received a

fair and impartial trial as guaranteed them by the Fourteenth Amendment to the Constitution of the United States?

The Missouri statutes on change of venue are set out in the Appendix.

Conclusion

We respectfully urge this court to grant this writ of certiorari for the reasons set out, and because of the confusion regarding trials by contempt. These men face long terms of imprisonment because they were denied due process of law and equal protection of the laws, as guaranteed by the Fourteenth Amendment to the Constitution of the United States. They were not guilty of contempt. The law of trial by contempt should be clarified. Trial by contempt should not be extended to the bribing of witnesses, assaults or murders outside the presence of the judge. Such criminal acts are not contempt but should be prosecuted as statutory crimes.

Respectfully submitted,

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Attorney for Petitioner Phil Cabbell.

April 16, 1952.

APPENDIX "A"

AFFIDAVIT

STATE OF MISSOURI,
County of Buchanan, ss:

Senator Wm. Orr Sawyers, of St. Joseph, Missouri, first being duly sworn, upon his oath deposeth and sayeth:

That, he is an attorney at law, and maintains his office in St. Joseph, Missouri; that, in April, 1951, he was employed by Alfred H. Osborne, a lawyer in Kansas City, Missouri, to represent said Osborne in an alleged criminal contempt proceeding then pending in Division 4, of the Circuit Court of Jackson County, Missouri, before the Honorable Thomas R. Hunt, a Judge of said court; that, shortly after affiant was employed by said Osborne, affiant learned that said Hunt had secretly interviewed witnesses, including Vernon Everage, in said proceeding in the chambers of said Hunt; that, at least at some interviews of said witnesses, said Hunt had had a stenographer present to make a record of such interviews.

That, in May, 1951, and before the trial of said contempt proceeding before said Hunt in June, 1951, affiant and Senator John Hosher, of Savannah, in Andrew County, Missouri, went to the chambers of said Thos. R. Hunt at which time affiant told said Hunt that affiant had learned of said interviews and the transcription made thereof, and requested said Hunt to furnish affiant with a copy of such transcriptions at affiant's expense.

That, thereupon, said Hunt became quite red-faced, and apparently embarrassed, and stated that said interviews were his private investigation, that they were not part of any public proceeding, that said Osborne was not entitled to such transcriptions, and said Hunt very curtly refused affiant's request for copies of such interviews.

(Signed) WM. ORR SAWYERS.

Subscribed and sworn to before me, this 1st day of April, 1952.

(Signed) RUTH BAUMAN,
Notary Public.

[SEAL.]

My Commission expires Feb. 16, 1955.

APPENDIX "B"

AFFIDAVIT

STATE OF MISSOURI,
County of Jackson, ss:

Marion Waltner, former Judge of the Circuit Court of Jackson County, Missouri, at Independence, resident of Kansas City, Missouri, with offices at 600 National Fidelity Life Building, 1002 Walnut St., Kansas City, Missouri, first being duly sworn according to law, upon his oath, deposeth and sayeth:

That on, April 6th, 1951, he received a telephone call from Mrs. Vernon Everage, to the effect that her husband, Vernon Everage, had been arrested, and that she wanted affiant to represent said Everage; that said said Everage was to be taken to the office of the Prosecuting Attorney of Jackson County, Missouri, the next morning, April 7th, 1951; that, on the morning of April 7th, 1951, affiant went to the office of Henry H. Fox, Jr., Prosecuting Attorney of Jackson County, Missouri, and told said Fox that affiant wanted to talk to Vernon Everage, whereupon said Fox said that it was all right with him (Fox) to talk to Everage, that he, Fox, had no objection to affiant's talking to said Everage, but that Judge Hunt, who was then with Fox, was going to talk to Everage then, and that affiant could talk to Everage after that; that, for that reason, affiant was not permitted to talk to said Everage; that, very shortly after affiant talked to Fox, they, Hunt and Everage, left the office of Prosecuting Attorney together.

That, very shortly thereafter, affiant was advised by said Helen Everage that her husband would not need affiant's services for he had another lawyer.

(Signed) MARION WALTNER.

Subscribed and sworn to before me, this 2nd day of April, 1952.

(Signed) PEARL H. RICKETTS,
(SEAL.) *Notary Public.*

My Commission expires February 16, 1955.

APPENDIX "C"

REVISED STATUTES OF MISSOURI, 1949

478.463. Circuit court of Jackson county—divisions.—The circuit court of the county of Jackson, comprising the sixteenth judicial circuit, shall be composed of ten divisions and a judge shall be selected to preside over each division. Divisions numbered one to nine, inclusive, shall sit at the city of Kanas City and the Independence division of said court shall sit at the city of Independence. (1949 S. B. 1140 § 478.463)

(Note: Sections 478.463 and 478.467 as enacted in 1949 Senate Bill 1140 represent a combination of the following enactments and the constitutional provision specified: Law 1871, p. 28 § 4 as amended Laws 1879 p. 80; Laws 1889 p. 76, Laws 1901 p. 117, Laws 1905 p. 121, Laws 1907 p. 201 and Laws 1913 p. 211 §1.)

478.500. Judge of other division to hold court, when.—Whenever the judge of any division of said circuit court shall be sick, absent, or, from any cause, is unable to hold any term or part of term of court in such division, or his regular term at Independence, such term, or part of term, may, by request of such judge of such division, be held by a judge of any other division of said circuit court; and if such judge fail to make such request, or if the judge so requested, for any reason, fail to hold such term, or part of term, of court in such division, or his regular term at Independence, then the attorneys of court may, in the manner provided by general law, elect one of their members possessing the necessary qualifications to hold court in such division, or at Independence, for the occasion. (L. 1913 p. 211 §5)

545.650. Change of venue and disqualification of judges in multiple-judge circuits.—In all circuits composed of a single county having more than one judge, no change of venue shall be allowed by said circuit court to the circuit court of any other county in this state for the cause that the judge sitting for the trial of said suit is prejudiced, nor for the cause that the opposite party has undue influ-

ence over the judge, but if any such legal objection is made to try any case, then such case shall be transferred to another division of said circuit court presided over by a different judge. Only one such application shall be made by the same party in the same case, and shall be made as to only one of the judges of said court. (2232, A. 1949 H. B. 2142)

545.660. When judge deemed incompetent to try case.—When any indictment or criminal prosecution shall be pending in any circuit court or criminal court, the judge of said court shall be deemed incompetent to hear and try said cause in either of the following cases:

(1) When the judge of the court in which said case is pending is near of kin to the defendant by blood or marriage; or,

(2) When the offense charged is alleged to have been committed against the person or property of such judge, or some person near of kin to him by blood or marriage; or,

(3) When the judge is in anywise interested or prejudiced, or shall have been counsel in the cause; or,

(4) When the defendant shall make and file an affidavit supported by the affidavit of at least two reputable persons, not of kin to or counsel for the defendant, that the judge of the court in which said cause is pending will not afford him a fair trial. (4037)

556.010. Criminal offense defined.—The terms "crime," "offense," and "criminal offense," when used in this or any other statute, shall be construed to mean any offense, as well misdemeanor as felony, for which any punishment by imprisonment or fine, or both, may by law be inflicted. (4867)

476.140. Commitment for contempt to set forth particulars.—Whenever any person shall be committed for any contempt specified in this chapter, the particular circumstances of his offense shall be set forth in the order or warrant of commitment. (2031)

545.240. Informations—how filed, verified, endorsed.—Informations may be filed by the prosecuting attorney as informant during term time, or with the clerk in vacation,

of the court having jurisdiction of the offense specified therein. All informations shall be signed by the prosecuting attorney and be verified by his oath or by the oath of some person competent to testify as a witness in the case, or be supported by the affidavit of such person, which shall be filed with the information; the verification by the prosecuting attorney may be upon information and belief. The names of the witnesses for the prosecution must be endorsed on the information, in like manner and subject to the same restrictions as required in case of indictments. (3894)

545.280. Prosecuting witness, who deemed.—When the information is based on an affidavit filed with the clerk or delivered to the prosecuting attorney, as provided for in section 545.250, the person who made such affidavit shall be deemed the prosecuting witness, and in all cases in which by law an indictment is required to be endorsed by a prosecutor, the person who makes the affidavit upon which the information is based, or who verifies the information, shall be deemed the prosecutor; and in case the prosecution shall fail from any cause, or the defendant shall be acquitted, such prosecuting witness or prosecutor shall be liable for the costs in the case not otherwise adjudged by the court, but the prosecuting attorney shall not be liable for costs in any case. (3900)

1 Mo. Territorial Laws 8, "Act of Congress, Approved June 4, 1812."—"No man shall be deprived of life, liberty, or property but by judgment of his peers and the law of the land."

Constitution of Missouri, 1945, Article I, Section 22 (a). Right of trial by jury—qualifications of jurors—two-thirds verdicts.—That the right of trial by jury as heretofore enjoyed shall remain inviolate; provided that a jury for the trial of criminal and civil cases in courts not of record may consist of less than twelve citizens as may be prescribed by law, and a two-thirds majority of such number concurring may render a verdict in all civil cases; that in all civil cases in courts of record, three-fourths of the members of the jury concurring may render a verdict; and that in every criminal case any defendant may, with the assent of the court, waive

a jury trial and submit the trial of such case to the court, whose finding shall have the force and effect of a verdict of a jury.

Article V, Section 15. Judicial circuits—establishment and changes—authority of judges—general term and divisions.—The state shall be divided into convenient circuits of contiguous counties. In each circuit there shall be at least one judge. The circuits may be changed or abolished by law as public convenience may require, but no judge shall be removed thereby from office during his term. Any circuit judge may sit in any other circuit at the request of the judge thereof. In circuits composed of a single county and having more than one judge, the court may sit in general terms or in divisions.

Source: Const. of 1875, Art. VI, §§24, 27, 28, 29.